

In the Matter of

OSHA Emergency Temporary Standard

Docket Number OSHA-2020-0004

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submitted *pro se*

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Part II: Changes made and explanation

OSHA made two fundamental errors that within the meaning of title 5, United States Code, section 706, are both arbitrary and capricious, and without substantial evidence, interwoven throughout the reasoning of the agency, requiring the emergency temporary standard and proposed rule to need to be substantially reformed. As described the the Supreme Court in 2019 in a Social Security Case, where the relevant standard is “The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive”¹ which also applies to OSHA.

The Supreme Court stated “[t]he phrase ‘substantial evidence’ is a ‘term of art’ used throughout administrative law to describe how courts are to review agency factfinding. Under the substantial-evidence standard, a court looks to an existing administrative record and asks whether it contains ‘sufficien[t] evidence’ to support the agency’s factual determinations. And ... the threshold for such evidentiary sufficiency is not high. Substantial evidence, this Court has said, is ‘more than a mere scintilla.’ It means—and means only—‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’”² What is incredible is how OSHA cannot even meet the low standard on substantial evidence on two crucial issues, on why the emergency temporary standard covers only a fraction of healthcare workers need an emergency temporary standard and why the route of transmission of COVID-19 is not airborne.

The first fundamental error is that the “grave danger from the new hazard of workplace exposures to SARS-CoV-2” can be limited to healthcare workers in healthcare settings “except under a limited number of situations”. In reality, that danger extends, at a minimum to all workers

¹ 42 U.S.C. §405(g)

² *Biestek v. Berryhill* 139 S. Ct. 1148 (2019) (internal citations omitted)

in America³ when they interact with others in the workplace, except under a few circumstances, due to the fact that if you exclude the first wave of the pandemic, healthcare is one of the safest industries from a COVID-19 perspective, and the risks when using a fit tested respirator of getting COVID-19 are virtually zero. The second fundamental error that “COVID-19 infections occur mainly through exposure to respiratory droplets (referred to as droplet transmission) when a person is in close contact with someone who has COVID-19” and that those respiratory droplets are produced “when people with COVID-19 cough, sneeze, sing, talk, or breathe.” In reality, especially when people who are infectious with SARS-CoV-2 talk, they produce aerosols which can stay infectious in the air in an indoor space and easily be inhaled not just by people who are in close contact, but who share indoor air for a significant period, and the airborne route of transmission is the predominant, if not exclusive, route of transmission.

Change 1: Table of Contents

The table of contents is changed to add two sections. The first section is to rename section 502, which is entitled “Healthcare” and split that into two sections. I decided to label them “Permanent Requirements” and “Temporary Requirements” based on the fact that while COVID-19 will require permanent changes, requiring everyone to wear a face covering and to physically distance is not permanent. Second, I create an alternate respiratory protection program in section 504a, based on the mini respiratory protection program and layering on it an additional layer to protect workers. In addition, I did not include section 509 in this suggestion, insofar as it is OSHA who can decide what it does not want to put into regulation and needs to incorporate by reference.

³ To be honest, I would use “everyone” in America. Given the dangers of B1617.2, I think unless you have been given two doses of a mRNA vaccine or have had COVID or another vaccine before and subsequently given a mRNA vaccine, and waited two weeks, you are still at significant risk of getting COVID-19.

Change 2: Scope

Consistent with the first grave error made by OSHA, that the emergency temporary standard applies to all workers, the requirements in §1910.502(a) deliberately narrow the screening requirements so that it means that many healthcare employers simply have to ask non employees if they have a cough, fever, shortness of breath, or loss of taste and smell, and perform a contactless temperature check, and be exempt from the rule.

The limitation to healthcare services and healthcare support services, which §1910.502 as proposed by OSHA is intended to cover, is specifically rejected. While being while the rule is erroneously based on the assumption that only healthcare workers who directly or indirectly interact with patients suspected or confirmed to have COVID-19 are at grave risk, given that you need to share the air with someone who is infectious with SARS-CoV-2. Rather, the limitation to healthcare workers mirrors the belief in February and March of 2020, based on the 2003 SARS outbreak.⁴ The contact of a contact risk does not apply differently in healthcare than without, and given the US policy not to conduct such tracing.⁵

As a consequence, the application of this emergency temporary standard and proposed rule under §1910.502 is expanded to cover all workers covered by the Occupational Safety and Health Act with the exception of workers who exclusively telework. Using a worker based approach and rejecting a settings approach is needed to ensure coverage to all applicable workers. The narrow telework exception is intended to apply only when all work is performed at home, or settings without co-workers that the employee decides. The reasoning is that such workers do not have occupational risk the employer controls. On the other hand, §1910.503, which governs masks and physical locations, would apply, if adopted, to workplaces controlled by employers and where employees work. The requirements of §1910.503 act effectively as a national mask mandate that has been needed for, and that the Illinois Medical Professionals

⁴ I am not trying to prove or disprove how a prior virus SARS-CoV-1 spread.

⁵ Some Asian nations, including the Republic of China, do trace second degree contacts.

Action Collaborative Team has been advocating for a year, and I fully agree with their petition⁶ signed by over 112,000 people.

Change 3: Definitions

The proposal consolidates the definitions all into for ease of usage, so that only a single definition applies. Given the substantial changes, consolidating them into a single place where they can be collectively adjusted.⁷

Several definitions were removed, based on their uselessness in the modified regulation.

- The term “aerosol generating procedures” was deleted because talking produces a substantially greater number of aerosols that can be infectious with SARS-CoV-2. In addition, as will be later described when discussing §1910.503(h), the dental procedures are handled separately and subjected to additional requirements.
- Several terms describing healthcare workplaces have been omitted, namely “ambulatory care”, “healthcare services”, and “healthcare support services”. Since the arbitrary distinction between healthcare and other workplaces is rejected, these terms are not needed.
- The terms “Clean / cleaning”, “disinfect / disinfection”, and “high touch surfaces and equipment” are removed due to the limiting of contact precautions to hand hygiene, based on the science showing the absence of contact transmission. Furthermore, this is intended to make clear that the hygiene theater of surface cleaning is no longer needed and should be discontinued. This step would reduce employer costs and make the standard more feasible.

⁶ <https://www.change.org/AmericaMaskUp>

⁷ While I disagree with the CDC guidance on fully vaccinated, I decided not to propose a major change in this definition, but instead made a reference to CDC definition, so that it becomes clear that the regulation may change as subsequent events occur.

The term “close contact” was substantially modified with a deliberate intent to address the Center for Disease Control and Prevention guidance. For that reason, while the six feet for 15 minutes over 24 hours is sufficient, it is far from underinclusive, and a concept of shared air, shared breathing zone for a noticeable period. The use of the term “noticeable” for close contact and “prolonged” also conforms with the CDC usage in a March 8, 2020 document published on Medium where the early definition used two meters for a prolonged period⁸. This change would also make it substantially easier to protect privacy interests.⁹ Second, by saying that the time a person is complying with the requirements of modified §1910.502(f)(2) cannot be considered, I am saying that if you have the protection that is needed to effectively ensure you won’t get COVID-19 even if spending hours holding a COVID patients hand to comfort them, it should not be a close contact. Third, technical changes are made to reflect that it is infectious with SARS-CoV-2 that matters in determining risk of spread, not having COVID-19 or long covid. Fourth, while the new OSHA guidance uses a respirator and any other required personal protective equipment, the old guidance was outside of aerosol generating medical procedures¹⁰, in determining the six feet for fifteen minutes over 24 hours, time spent wearing a facemask and eye protection if the patient is unmasked did not count as a close contact.¹¹

⁸The definition is defined at <https://downloads.regulations.gov/OSHA-2020-0004-0010/content.pdf> as:
“a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period; close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case

– or –

b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on)
If such contact occurs while not wearing recommended personal protective equipment (PPE) (e.g., gowns, gloves, NIOSH-[certified] disposable N95 respirator, eye protection), criteria for PUI consideration are met.”

⁹ My view is that privacy interests are clearly outweighed by the compelling government interest to contact trace. Furthermore, in the event of a person’s failure to agree to contact trace, going to court for an order of isolation / quarantine would be needed. In that case, my view is that the constitution requires a public trial for determining whether the person needs to be public pursuant to the Fourteenth Amendment to the Constitution,

¹⁰ For these procedures, any duration without a respirator, eye protection, gown, and gloves was deemed an exposure.

¹¹ <https://downloads.regulations.gov/OSHA-2020-0004-0736/content.pdf>

Some settings are defined based on increased risk. The first is a “congregate living facility”, based on the increased likelihood of spread and limited ability to control an outbreak in such a setting. The second is “a cruise ship,” based on the no sail orders issued in 2020. In these sorts of settings, the virus spreads like grass in a fire or how wildfires in California spread quite easily. And I added “telework” for a uniform definition given it warrants exemption from the rule.

In addition, the term “face covering” is added. This is because of the requirement in §1910.503(c)(1) as proposed actually does not require wearing a medical mask. Instead it uses a face covering per the mask wearing on public transportation order guidance, and includes guidance implementing the OSHA determination on valved masks. The guidance includes a requirement that face coverings must fit well to the wearers face, given the importance of fit.

The term “respirator” is slightly modified and surgical mask brace added to comport with the proposed §1910.504a. In addition, the term “respiratory protection” is added to be consistent with this definition and to make clear that the mini respiratory protection program is not adequate protection.

I use a “test” to screen for COVID-19. But this is not only designed to reject the usage of a test for diagnostic purposes only. A PCR test that takes several hours to administer is not a good test for determining infectiousness, which is what matters in this non clinical environment that OSHA should be attempting to regulate. In fact, a PCR test with a high enough CT value may show non-infectiousness but a prior exposure to COVID-19 in the past.

Change 4. COVID-19 Plan

The COVID-19 plan is a critical step for an employee.to make. The key is that by foxomg the first of the two grave issues with the plan, the change to §1910.502(a) would ensure that all employers would be required to create a COVID-19 safety plan.

OSHA guidance on the plan is adjusted for the fact that the mode of transmission has corrupted the model plan and compliance assistance programs. Consequently, the note to §1910.502(c)(1) cannot be upheld, and OSHA should **NOT** delay amending the emergency temporary standard to issue guidance or a model safety plan. For this reason, a safe harbor provision has been included in the slightly expanded note to §1910.502(c)(1) to make changes as the model plan is changed. In addition, the safety coordinator's requirement to be knowledgeable is limited explicitly to COVID-19. This is designed to make clear that a safety coordinator needs to not be required to focus on non COVID-19 related infection prevention measures.

The next change is, the requirement to determine vaccination status under §1910.502(c)(4)(ii) is expanded to apply the same standard proposed by OSHA to others. It is intended to also specifically make clear that simply posting a sign saying masks required unless vaccinated or asking someone verbally without any reason to trust them such as personal knowledge or other factors making the person trustworthy to believe. This requirement is designed to address the behavioral science factors that individuals who are against COVID-19 vaccines, as opposed to vaccine hesitant, will also refuse to wear masks.

Finally, the requirement to protect employees who enter private residences or other locations is modified to apply broadly, accepting that not all employers are covered by the emergency temporary standard or actually will comply with it. The rule also contains two exceptions for withdrawal. The first, which is consistently made, is when an employee meets the requirements to be around a COVID-19 case under §1910.502(f)(2), withdrawal is not required. The second is that because of the broad application, it accepts that first responders may need to respond to emergencies, including but not limited to fire, emergency medical services, or law enforcement.

Change 5. Screening

The screening and triage requirements are deliberately modified based on narrowing where screening must be performed, given the opportunity costs and infeasibility. For example, the OSHA guidance cites a Netherlands study from April of 2020 in terms of cost-benefit to conduct certain screening, even though that has little probative value due to, for example, the timing of the study as early in the pandemic.¹²

The first requirement in that instead of direct patient care areas¹³, the focus is changed on congregate living facilities, based on the unique risks of spread in such settings. This rule requires non residents to be screened instead of non-employees, based on the fact that even if residents were out a short time, if they got SARS-CoV-2, they would be pre-infectious and screening would be pointless. It should be noted that based on my analysis in ambulatory care or in home healthcare employers to get exempt from this emergency temporary standard need to (a) choose to decline to perform COVID-19 testing, (b) not admit symptomatic individuals or permit symptomatic individuals to be present, (c) ensure that if at a hospital the area is well defined, and (d) ensure all employees present in a hospital or home healthcare setting are fully vaccinated are exempt from all the other provisions of the emergency temporary standard.

The second requirement replaces complying with CDC guidance. The requirement to comply with CDC COVID-19 Infection Prevention and Control Measures, which given the nature of the emergency temporary standard, are not specific enough to include anyways for OSHA to enforce, or the standard and transmission based precautions, which should not require an emergency temporary standard to enforce, are removed. The general guidance for infection control for healthcare workers is not recommended, for example, not due to lack of uselessness,

¹² <https://downloads.regulations.gov/OSHA-2020-0004-0982/>

¹³ Hospital admission screening in my view is generally a COVID-19 test. What test should be ordered for diagnostic purposes (as opposed to infection control) is something that should be omitted from the emergency temporary standard or rule.

as this does not address the unique risks imposed by COVID-19¹⁴, and additionally due to these practices being enforceable elsewhere¹⁵. Instead, §1910.502(e) imposes requirements for widebreak community spread is declared, which is to implement screening, maximize telework, and minimize sharing of indoor air, designed to stop a future wave, if it ever arises.

Change 6. COVID Suspect or Confirmed Cases

The next area is regarding medical masks and face coverings. Because the face covering requirements should be temporary, the general requirement to wear a face covering, the areas of §1910.502(f)(1) are left deliberately shortened. Given my earlier noting on how a face covering and facemask both need to be well fitting, which is why the definition of facemask was modified to me to be a subset of face coverings, which are required under the definitions to fit well to the face to count, the requirement to wear a facemask was omitted.

The provisions contain six exceptions, which were incorporated into the numerous exemptions given from the face covering or physical distancing requirements, although not exactly. However, any faceshield requirement instead of a mask has deliberately been omitted, as faceshields without masks are ineffective at stopping or reducing COVID-19 transmission. The requirement to allow an employee to wear a facemask instead of a face covering is consistent to this rule, and the requirement to provide facemasks outside to individuals entering is consistent with outdoor transmission being safer, and that if employees need a facemask, visitors should be offered one in the same manner to better protect employees.

The next set of requirements include what should be required for COVID-19 staff. The evidence for a gown and gloves does not rest on anything COVID-19 specific as little evidence

¹⁴ As a consequence, using an emergency temporary standard would be inappropriate for enforcement of these precautions.

¹⁵ Core Infection Prevention and Control Practices for Safe Healthcare Delivery in All Settings – Recommendations of the Healthcare Infection Control Practices Advisory Committee
<https://downloads.regulations.gov/OSHA-2020-0004-1032/content.pdf>

supports the claim that contact transmission is significant. Furthermore, the eye protection is merely precautionary. Nevertheless, §1910.502(f)(2) omits vaccination status, when for a disease such as measles, you would only use fully vaccinated staff wearing respiratory protection. The addition of the fully vaccinated requirement is needed so that a¹⁶ single point of failure does not exist in the form of respirators which do not fit properly.

Some additional changes are that given the need to ensure protection of workers based on the advances of technology during the pandemic and to reduce red tape, an alternate respiratory program in lieu of §1910.134 is proposed in this submission at §1910.504(a) to ensure workers have fit tested respiratory protection. The second change is that continuous use of a respirator is encouraged, instead of changing an N95 or elastomeric between patients. Continuous use is not the same as reuse of a disposable mask that this rule would prohibit, but means the nurse who is seeing multiple covid patients could keep the mask on as the nurse goes from patient to patient without doffing. Given that surgeons wear a N95 sometimes for several hours straight without negative effect, and studies that show it is safer than selective N95 usage, this specific strategy should be classified as conventional use, not contingency use.

The third change is that noting that a shortage of PPE or staff requires immediate actions to be made to attempt to correct the situation. This is intended to accept that doing a situation such as the first wave in March or April of 2020, an inability to find PPE would mandate extensive reuse, which is normally avoided, but makes clear that those exceptions should remain exceptional. In addition, given the nature of this standard, it accepts future shortages may occur and change the situation. This rule also applies to unvaccinated workers with additional testing requirements. The fourth change is that this proposal is intended to make clear that a hospital or nursing home that wishes to allow visiting a patient who has COVID-19 when they can ensure visitor safety should be able to. That is why the proposal makes clear that

¹⁶ This point of failure is unlikely in my view.

visitors can be prioritized over staff who have access to fit tested respirators for a loose fitting PAPR.

Instead of the PPE requirements for supposedly “aerosol generating procedures” in §1910.502(f)(3) that are superfluous. Instead, given that not everyone is going to be fit tested with a N95, a brief exposure outdoors during COVID-19 testing can still be safe when fully vaccinated due to the power of the outdoors plus a vaccine plus a medical mask with a faceshield is not high risk. This also is done because with the emphasis on rapid testing in §1910.503, this needs to be more feasible than requiring everyone who conducts testing to be wearing a fit tested respirator. And consistent with the rejection of aerosol generating procedures, §1910.502(g) should impose placement requirements, not on aerosol generating persons, but anyone who is infectious with COVID-19. The requirement to minimize staff and clean or disinfect are replaced by the closed door rule and a strong single patient¹⁷ preference¹⁸, along with maximizing ventilation and implementing a waiting period to close the space. And while the amount of dangerous in a room where someone who is infectious with the virus spent only a few minutes will be significantly lower compared to a room where the person spent an hour, due to superspreading from talking being a very significant risk, no differential is being recommended in this submission.

Change 7. Physical Distancing and Barriers

The physical distancing requirements are maintained, but limited by the various limitations in §1910.503 as proposed. The purpose of this is to ensure the requirements stay temporary, and is similar to face coverings. No other changes were made to §1910.502(h) while

¹⁷ Consistent with CDC guidance, cohorting suspect patients in the same room should not be done, even if that means cohorting positive cases.

¹⁸ Abraar Karan, MD, MPH, DTM&H, Michael Klompas, MD, MPH, Robert Tucker, MPH CIC, Meghan Baker, MD ScD, Vineeta Vaidya, DMD CIC, Chanu Rhee, MD, MPH, for the CDC Prevention Epicenters Program, The Risk of SARS-CoV-2 Transmission from Patients with Undiagnosed Covid-19 to Roommates in a Large Academic Medical Center, Clinical Infectious Diseases, 2021;, ciab564, <https://doi.org/10.1093/cid/ciab564>

the physical barrier portion is rejected. As plexiglass is harmful, without appropriate engineering analysis, plexiglass should not be installed to stop COVID-19, with the exception of a separate full length window. In such a case, plexiglass would be helpful, because the aerosols are not going to go around the plexiglass. But since they can be installed for reasons other than airborne infectious diseases, such as security, the requirement is very narrow.

Change 8. Cleaning surfaces and the air

The requirements to clean surfaces in §1910.502(j)(1) and §1910.502(j)(2) have been removed while the hand hygiene provisions in §1910.502(j)(3) and ventilation provisions in §1910.502(k) are retained. The reason is because frequent hand hygiene is enough to stop any spread through surfaces or fomites, and the ventilation rules are adequate. Furthermore, while I would like to see both become standard, when cases drop such that masks and distancing can be eliminated, the other requirements can be eliminated.

Change 9. Screening

Besides vaccinations, screening is an appropriate tool, but while I permit it to be done by an employer, the reason it is changed is because I would rather stay home if sick be implemented. This section is designed to hopefully prevent spread of respiratory infections at work. The requirement in paragraph (l)(1)(ii) is removed as such testing is required to be free to the employee except under select conditions.

The notifications of a COVID-19 positive case is very important, which is why §1910.502(l)(3) requires notifications. Several requirements have been added, namely that only a fully vaccinated worker wearing fit tested respiratory protection should not be deemed a close contact. The explanation of the infectious period is omitted as that should be based on CDC

guidance which can change as new variants emerge. When the exposure occurred outside of a close contact, worker should be notified of the approximate date and time so workers can accurately estimate their risk, and contact tracers need to be notified. Of course, the source who notified the employer should not have to be notified again.

Given the needs to promote contact tracing, the proposal specifically makes clear that an employer must fully cooperate with contact tracing and that federal and state statutes do not actually pose a bar to contact tracing. This is why §1910.502(l)(3)(D) requires public health authorities who are performing contact tracing to be notified, and makes clear that employers are not permitted to redact information to contact tracers. Furthermore, since a person who is wearing respiratory protection and is fully vaccinated is not exposed to covid-19, such a person is not required to be notified and if all employees in an area were fully vaccinated wearing respiratory protection, no notice would be needed, even if outside an area where COVID-19 positive cases are expected.

Change 10. Removal and Pay

The medical removal provisions are retained with some changes, but the key is that all employees are allowed to isolate and quarantine with pay. The first change is that in §1910.502(l)(4)(ii)(B), a PCR test is required. Consistent with the flawed usage of PCR tests as public screening tools, any COVID-19 test should be allowed.¹⁹

The second change is that when a close contact occurs, different criteria are triggered based on where the exposure occurs. Of course, as should become apparent, since someone who is wearing respiratory protection²⁰ and fully vaccinated is *not* exposed but has a dual layer of strong protection, such a person is not a close contact. The change is that when someone is in close contact, the solution is to rapid test.

¹⁹ Furthermore, the 10 day period which was created when we did not have enough testing may be inapplicable when we have the ability to conduct a double negative test 24 hours apart.

²⁰ A fit tested respirator pursuant to the full or alternate (proposed) respiratory protection program, or a respirator not requiring fit testing would both be adequate for this purpose.

When outside, wearing respiratory protection, is fully vaccinated, or has recovered within the past three months, the likelihood of getting COVID-19 is low. As a consequence, the person can stay in the workplace until day 5 under such circumstances and upon a negative test on or after day 5, would not be subject to exclusion from work. It also accepts that while CDC guidance may state that the risk is low, it is not the same as the incredible protection of a fully vaccinated person wearing a fit tested N95 for a single use, which is why the exemption for fully vaccinated and a recovery in the past three months are lumped together with respiratory protection and being outside.

In other cases, the return to work early after day 7 would be supported by testing. If using the mini respiratory protection program, the risk is slightly lower, although due to lack of fit testing, not adequately lowered. However, the contagious period continues until 14 days after exposure. For this reason, for such employees, daily testing is required. The decision to set the expiration at 12 hours is to ensure that it is a relatively recent determination, yet not to require two tests for a shift if the test occurred shortly before work and the work day is not extremely lengthy. This also encourages prompt responses and faster tests because the 12 hour period begins at the time the test was administered.

The requirement on suitable work if removed from the workplace is amended to restrict remote working to teleworking from the place of isolation or quarantine. The key is that isolation at the workplace, such as a separate office for a doctor, would not be acceptable. Since the person should be under a legal order to isolate or quarantine, this should not be possible. And if not isolated or quarantined, an employer should be required to treat such a person as if they were.

The medical removal protection benefits is modified to eliminate the exemption for 10 or fewer employees. Given the tax credits, the need for workers to be supported per OSHA analysis, and the fact that quarantining should be not merely a right, but a legal duty, all workers should be entitled to this protection. The other provision is that the reinstatement provision

creates a new legal standard. Instead of using the Family and Medical Leave Act provisions, which allows a substantially equivalent job position, and defines that provision rigorously, this requires the former position. Given that a person who is out sick at a large employer will often also be covered by the Family and Medical Leave Act, OSHA should not impose an additional burden on those employers.

In addition, when contact tracing suggests or requires a quarantine, this protection is extended. If a person were not to comply with quarantine or isolation, such as attempting to return to the workplace prematurely, protections would be forfeited including reinstatement. His is designed to help overturn the mindset that quarantine or isolation is merely a right or optional. In my view, if voluntary agreements cannot be reached, a judicial quarantine order ought be swiftly sought, and a violation should be deemed criminal contempt.

Change 10. Vaccination

Vaccination is a crucial tool, which is a major reason why this emergency temporary standard needs to be implemented for all workers. The rule makes three changes which are designed to promote vaccination, which while helpful, do not go as far as I would go²¹. The most important change to the vaccine access through employment is not actually in imposing additional requirements here, but to rejecting the arbitrary and capricious decision that grave risks only for certain healthcare workers and support staff, when most workers are at grave risk.

Three requirements are imposed, which are designed to boost vaccination rates. The first change, which is to ensure vaccine access for workers, requires employers to provide for vaccination at the workplace if unavailable elsewhere, even though paid time off is provided for

²¹ I would prefer language that said “Effective 15 days after the FDA issues full approval for a COVID-19, each employer shall ensure that each person present at the workplace who is not medically unable to receive a COVID-19 vaccine is fully vaccinated. A person who gets the first dose within two weeks of full FDA approval or turning of age where eligible for such a vaccine (if applicable) and gets any subsequent doses within the period recommended by the Advisory Committee for Immunization Practices shall not be subject to this requirement.”

vaccination. The second change is to require employees who choose not to be vaccinated understand and sign a statement based on the bloodborne pathogen rule for Hepatitis B. The third change is to directly preempt state vaccine mandate or vaccine passport prohibitions at workplaces. This is designed to promote public health.

Change 11. Conclusion of Section

The training and other requirements of §1910.502(n) is changed to clarify that it is employee specific training that is required, to reduce mandatory training which is unrelated to employee duties. Furthermore, training and record keeping requirements are limited to reduce burdens on employers. Other provisions are also adjusted, mostly to make conforming changes and other minor edits.

Change 12. New Section 1910.503: Masks and Distancing

A new section is added to codify as temporary requirements the requirements to wear a face covering and physical distancing. Staying masked six feet apart, even though SARS-CoV-2 is transmitted predominantly, if not exclusively, through the airborne route of transmission, are simple steps that employers can enforce employees and others who are at the workplace to comply with. §1910.503(c), however, merely requires employers to make the best efforts to enforce compliance.

The next requirement is for cruise ships under §1910.503(d). While it would be better to mandate that vaccinations occur, the requirement cannot be written as such. Instead, it requires that the employer treat the ship and passengers while embarking and disembarking as if they had Covid-19, and subsequently requires employees to be fully vaccinated and wear respiratory protection unless the vaccine mandate for cruise ships is implemented. This is designed to

account for the risks that a cruise ship, which draws people from a large area, who share the air for an extended period, has.

Paragraph (e) describes best efforts. For non employees, it uses the CDC transportation mask mandate guidance and adds providing a face covering to wear. This also addresses that employers must take corrective action when employees do not comply, but it imposes a restriction of best effort. §1910.503(e)(3) does not require that law enforcement enforce this through police powers due to Federalism concerns.

Paragraph (f) describes exemptions²². These exemptions are not merely exceptions, but are intended so that there is no duty to mask or physically distance under an exemption. §1910.503(f)(1) provides for physical distancing exemptions. It implements the CDC and common sense exemption to the same household. It also includes a party exemption based on small groups of people, such as friends, who can stay close together. To limit this, a cap of six persons can be in such a group. In addition, employees cannot be in such an exemption, on the basis that would evade the purpose of the small group exception, which is to reduce enforcement needs.

Paragraph (f)(2) describes locations where these rules do not apply and gives several exemptions. Based on the incredibly low risk outdoors, when very few cases have occurred outdoors, §1910.502(f)(2)(i) says masks and distancing are not needed outdoors. The next location, §1910.502(f)(2)(ii) covers where everyone is fully vaccinated. It expanded slightly so that admitting a person who is unable to get vaccinated pursuant to disability or religion and has a federal right²³ not to get vaccinated.

The next two exceptions are the jurisdictional exception and the rare safety exception. When an employer requires all employees present to be fully vaccinated and have respiratory protection, and a two hour buffer time after the exemption ends, masks and physical distancing

²² Exemptions for a face covering not negate the need for respiratory protection, when required.

²³ This exemption is not intended to apply to state vaccination exemptions or vaccine mandate prohibitions. §1910.502(m)(3) is intended to preempt those.

cannot be imposed because the ETS would not protect any worker.²⁴ to address when unsafe §1910.503(f)(2)(iv) provides a narrow unsafe exception. This should occur very rarely, and testing requirements of every three days are imposed for employees or the twelve hour rule for others.

A cruise ship (and an airplane when it meets these requirements) would also be exempt due to this qualifying under multiple exceptions.²⁵ The telework exception is based on the fact that an employer does not control an employee while teleworking, so it consequently is limited to when not otherwise required to mask or distance. The work alone exception is used in the OSHA healthcare worker and the CDC transportation order, and is intended to combine both orders.

The personal exemptions are designed to address individual cases, and include the CDC transportation order safety exception. A broader youth exception for parents unable to get young children to wear a mask is included to reduce conflicts. And the hearing impairment exception is designed to comply with the Americans with Disabilities Act. Note that no requirement is imposed for a faceshield exists in such a case. When such need arises frequently, testing requirements may be imposed. Finally, the consumption exception based on CDC guidance for transportation, requires that people not talk, sing, or yell while eating, given those are dangerous and spread aerosols.

Exemptions also exist for a recent negative test or if fully vaccinated, with the test exception within the previous twelve hours to be consistent with the employment exception for a close contact at work.

²⁴ Since an employee is not at risk under such circumstances of getting COVID-19, an exemption would be required.

²⁵ Some international flights and some nations may require for admission full vaccination. This exception applies in the same way as the cruise exception.

Paragraph (f)(5) exempts people at their residence unless workers are present. It also excludes patients in their hospital room, people under confinement, or those at a congregate living facility where they reside due to impossibility of enforcement.

Paragraph (g) is designed to severely limit when an employee who pays for a test so they do not have to unmask, by requiring an employer to allow employees who are fully vaccinated to unmask, does not use the policy to mandate unmasking, does not apply the policy if a close contact exception applies (meaning masking would be required even if a test was taken earlier that day paid by the employer to come to work) and imposes no other consequences for not taking an employee paid test.

Paragraph (h) covers dental, and is designed to protect dental workers without respiratory protection. Since the patient must unmask, the dental worker needs other protection. The solution is to require that without respiratory protection, the patient test negative or be vaccinated,

Paragraph (i) contains the termination requirements. As I helped author a petition²⁶ calling on the May 13 CDC guidance to be revised on the grounds it did not constitute public health guidance, Based on here immunity at a minimum of 70% of residents vaccinated, using the two week delay that the CDC recommends for protection, based on one dose given the substantial protection against SARS-CoV-2²⁷ from even a single dose considering the high likelihood of getting a second shot given a first dose has been administered. To ensure cases are low enough, I used the definition of 1 case per 100K people per day with the caveat that percent positivity not exceed 1% to discourage undertesting, and measure this over a seven day average. This is decided on a county of location basis except for transportation and cruise lines, due to the differences in such circumstances. Furthermore, a severability provision was included in §1910.505 to answer what should occur if the date cannot be upheld due to unity.

²⁶ <https://www.change.org/ecvp petition>

²⁷ Except the B1617.2 variant

Change 13. Alternate Respiratory Protection Program

The two respiratory programs, the full program under §1910.134, and the mini program under §1910.504, are inadequate to comply with the needs to protect workers. Three issues exist.

- The first issue is that the mini program does not require fit testing, which is crucial to ensure workers are adequately protected. As a consequence, the alternate program requires full compliance with annual and other fit testing under §1910.134(f), when not to be used and retesting under §1910.134(g)(1), and related recordkeeping under §1910.134(m)(2).
- The second issue is that the full program requires unnecessary medical evaluations, given that under the circumstances such a program would be used, adds expense, incurs delays, and most importantly, encourages misinformation that masks do not work, or are dangerous²⁸. As a consequence, atmosphere supplying respirators and escape only respirators are not allowed under this program.
- The third issue is that given the introduction of braces that seal a medical mask to a wearers face, some of which are 3D printed and customized to the contour of the wearers face, and can have greater breathability and a great fit compared to an elastomeric or N95, we need a program to allow such masks to be used. This program allows such a combination to be used with the medical mask deemed disposable and single use only and brace being reusable, if fit trusted.

§1910.504a as proposed would modify the mini respiratory protection program to create this program designed to protect workers from COVID-19.

²⁸ The North Dakota legislature example where this helped pass a state law is but one example..

Part III: Proposed language

For the reasons set forth in the comment, subpart U of part 1910 of chapter XVII of title 29 of the Code of Federal Regulations is amended as follows:

Subpart U — COVID-19 Emergency Temporary Standard

Subpart U Table of Contents

1910.502 ~~Healthcare~~ Permanent Requirements

1910.503 Temporary Requirements

1910.504 Mini Respiratory Protection Program

1910.504a Alternate Respiratory Program Program

1910.505 Severability

1910.509 Incorporation by Reference

Authority: 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 8-2020 (85 FR 58393); 29 CFR part 1911; and 5 U.S.C. 553.

§ 1910.502 ~~Healthcare~~ Permanent Requirements.

(a) Scope and application.

~~(1) Except as otherwise provided in this paragraph, this section applies to all settings where any employee provides healthcare services or healthcare support services.~~

~~(2) This section does not apply to the following:~~

- ~~(i) the provision of first aid by an employee who is not a licensed healthcare provider;~~
- ~~(ii) the dispensing of prescriptions by pharmacists in retail settings;~~
- ~~(iii) non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;~~
- ~~(iv) well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;~~
- ~~(v) home healthcare settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;~~
- ~~(vi) healthcare support services not performed in a healthcare setting (e.g., off-site laundry, off-site medical billing); or~~
- ~~(vii) telehealth services performed outside of a setting where direct patient care occurs.~~

~~Note to paragraphs (a)(2)(iv) and (a)(2)(v): OSHA does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption in paragraphs (a)(2)(iv) and (a)(2)(v). Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine~~

~~ingredients, or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption in paragraphs (a)(2)(iv) and (a)(2)(v):~~

~~(3)~~

~~(i) Where a healthcare setting is embedded within a non-healthcare setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), this section applies only to the embedded healthcare setting and not to the remainder of the physical location.~~

~~(ii) Where emergency responders or other licensed healthcare providers enter a non-healthcare setting to provide healthcare services, this section applies only to the provision of the healthcare services by that employee.~~

~~(4) In well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, paragraphs (f), (h), and (i) of this section do not apply to employees who are fully vaccinated.~~

~~Note 1 to paragraph (a): Nothing in this section is intended to limit state or local government mandates or guidance (e.g., executive order, health department order) that go beyond the requirements of and are not inconsistent with this section.~~

~~Note 2 to paragraph (a): Employers are encouraged to follow public health guidance from the Centers for Disease Control and Prevention (CDC) even when not required by this section.~~

~~This section applies to all employers and employees covered by the Occupational Safety and Health Act, and settings where such employees work, except that it does not cover any employee who works exclusively from home or through telework.~~

~~(b) Definitions. The following definitions apply to this subpart section:~~

~~*Aerosol-generating procedure* means a medical procedure that generates aerosols that can be infectious and are of respirable size. For the purposes of this section, only the following medical procedures are considered aerosol-generating procedures: open suctioning of airways; sputum induction; cardiopulmonary resuscitation; endotracheal intubation and extubation; non-invasive ventilation (e.g., BiPAP, CPAP); bronchoscopy; manual ventilation; medical/surgical/postmortem procedures using oscillating bone saws; and dental procedures involving: ultrasonic scalers; high-speed dental handpieces; air/water syringes; air polishing; and air abrasion.~~

~~*Airborne infection isolation room (AIIR)* means a dedicated negative pressure patient-care room, with special air handling capability, which is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent or other enclosure designed to operate under negative pressure).~~

~~*Ambulatory care* means healthcare services performed on an outpatient basis, without admission to a hospital or other facility. It is provided in settings such as: offices of physicians and other health care professionals; hospital outpatient departments; ambulatory surgical centers; specialty clinics or centers (e.g., dialysis, infusion, medical imaging); and urgent care clinics. Ambulatory care does not include home healthcare settings for the purposes of this section.~~

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

~~*Clean/cleaning* means the removal of dirt and impurities, including germs, from surfaces using soap and water or other cleaning agents. Cleaning alone reduces germs on surfaces by removing contaminants and may also weaken or damage some of the virus particles, which decreases risk of infection from surfaces.~~

Close contact means being exposed to someone who is infectious with SARS-CoV-2. This includes being within 6 feet of any other person for a cumulative total of 15 minutes or more over a 24-hour period during that person's potential period of transmission. In addition, spending a noticeable period in the same breathing zone (such as a few minutes) or sharing the same indoor air as the person for a considerable period of time, especially if the infected person talked or made audible noise during such period, considering factors such as distance between the infected person and the contact. A person who enters an indoor space with the same air recently exited by an infected person who spent a substantial period in such space can be a close contact if they spend a considerable period in that space. In determining whether a contact is a close contact, activities that increase emission of respiratory fluids, such as speaking loudly, singing, or exercising, reduce the contact required for a close contact. Any time that a person who is fully vaccinated is wearing respiratory protection shall not be considered in determining whether such person is a close contact. The potential transmission period runs from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person ~~is isolated.~~ clears isolation per CDC guidance.

Congregate living facility means where people live in close settings, and often have close contact and may have difficulty isolating or need assistive services. Examples of congregate living facilities include, but are not limited to, jails, prisons, nursing homes, assisted living facilities, and homeless shelters.

Cruise ship means a commercial, non-cargo, passenger-carrying vessels with the capacity to carry 250 or more individuals (passengers and crew) and with an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew that are operating in international, interstate, or intrastate waterways, subject to the jurisdiction of the United States

~~*Disinfect/disinfection* means using an EPA-registered, hospital-grade disinfectant on EPA's "List N" (incorporated by reference, § 1910.509), in accordance with manufacturers' instructions to kill germs on surfaces.~~

Elastomeric respirator means a tight-fitting respirator with a facepiece that is typically made of synthetic or rubber material that is designed to and permits it to be disinfected, cleaned, and reused according to manufacturer's instructions. It is normally equipped with a replaceable cartridge(s), canister(s), or filter(s).

Face covering means a material made of multiple layers which covers the wearer's nose and mouth and fits snugly to the face without gaps or leaks around the top, sides, or bottom of the material between it and the wearer's skin. For purposes of §1910.503(c)(1), a face covering includes a respirator.

Facemask means a face covering that is a surgical, medical procedure, dental, or isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as

described in an FDA enforcement policy. ~~Facemasks may also be referred to as “medical procedure masks.”~~

Face shield means a device, typically made of clear plastic, that: (i) is certified to ANSI/ISEA Z87.1 (incorporated by reference, § 1910.509); or (ii) covers the wearer’s eyes, nose, and mouth to protect from splashes, sprays, and spatter of body fluids, wraps around the sides of the wearer’s face (i.e., temple-to-temple), and extends below the wearer’s chin.

Filtering facepiece respirator means a negative pressure particulate respirator with a non-replaceable filter as an integral part of the facepiece or with the entire facepiece composed of the non-replaceable filtering medium.

Fully vaccinated means when the vaccine takes full effect based on the clinical data. This is presently defined by the CDC as 2 weeks or more following the final dose of a COVID-19 vaccine.

Hand hygiene means the cleaning and/or disinfecting of one’s hands by using standard handwashing methods with soap and running water or an alcohol-based hand rub that is at least 60% alcohol.

~~Healthcare services mean services that are provided to individuals by professional healthcare practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. Healthcare services are delivered through various means including: hospitalization, long-term care, ambulatory care, home health and hospice care, emergency medical response, and patient transport. For the purposes of this section, healthcare services include autopsies.~~

~~Healthcare support services mean services that facilitate the provision of healthcare services. Healthcare support services include patient intake/admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.~~

~~High-touch surfaces and equipment means any surface or piece of equipment that is repeatedly touched by more than one person (e.g., doorknobs, light switches, countertops, handles, desks, tables, phones, keyboards, tools, toilets, faucets, sinks, credit card terminals, touchscreen-enabled devices).~~

Physical location means a site (including outdoor and indoor areas, a structure, or a group of structures) or an area within a site where work or any work-related activity (e.g., taking breaks, going to the restroom, eating, entering, or exiting work) occurs. A physical location includes the entirety of any space associated with the site (e.g., workstations, hallways, stairwells, breakrooms, bathrooms, elevators) and any other space that an employee might occupy in arriving, working, or leaving. A physical location does not include a telework location.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

Respirator means a type of personal protective equipment (PPE) that is certified by NIOSH under 42 CFR part 84 or is authorized under an EUA by the FDA. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators, elastomeric respirators, and PAPRs. Face coverings, facemasks, and faceshields are not respirators. except that a medical mask with a surgical mask brace may together constitute a respirator pursuant to 29 CFR part 1910.504a.

Respiratory protection means a person who is wearing a respirator pursuant to §1910.134 or §1910.504a.

Screen means asking questions to determine whether a person is COVID-19 positive or has symptoms of COVID-19.

~~*Surgical mask* means a mask that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials. The mask meets certain fluid barrier protection standards and Class I or Class II flammability tests. Surgical masks are generally regulated by FDA as Class II devices under 21 CFR 878.4040—Surgical apparel.~~

Surgical mask brace means any material designed to seal a facemask to the wearers face.

Test means any COVID-19 test designed to see whether a person is infectious for COVID-19. While a polymerase chain reaction test is acceptable, using a FDA approved or authorized nucleic acid amplification test or antigen test is encouraged. A test required under this subpart must be at no cost to any employee, except that an employer is not required to pay for a test to unmask under the conditions set under paragraph (g) of § 1910.503.

Telework means working remotely, normally at home. An employee can also telework at a place without co-workers and others at the employers at the employees discretion.

Tight-fitting respirator means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator (e.g., filtering facepiece).

User seal check means an action conducted by the respirator user to determine if the respirator is properly seated to the face.

Vaccine means a biological product authorized or licensed by the FDA through full or emergency use approval to prevent or provide protection against COVID-19, whether the substance is administered through a single dose or a series of doses.

Workplace means a physical location (e.g., fixed, mobile) where the employer's work or operations are performed but excludes telework.

(c) COVID-19 plan.

(1) The employer must develop and implement a COVID-19 plan for each workplace. If the employer has multiple workplaces that are substantially similar, its COVID-19 plan may be developed by workplace type rather than by individual workplace so long as all required site-specific information is included in the plan.

Note to paragraph (c)(1): For those employers who do not already have a COVID-19 plan in place, OSHA's website contains significant compliance assistance materials, including a model plan. Employers are encouraged to make adjustments to the plan as the model plan is updated to reflect the changing science and public health guidance/

(2) If the employer has more than 10 employees, the COVID-19 plan must be written. If an employer does not have more than ten employees, the plan may be partially in writing and need not include all details required by this provision.

(3) The employer must designate one or more workplace COVID-19 safety coordinators to implement and monitor the COVID-19 plan developed under this section. The COVID-19 safety coordinator(s) must be knowledgeable in infection control principles and practices as they apply to the workplace and employee job operations regarding COVID-19. The identity of the safety coordinator(s) must be documented in any written

COVID-19 plan. The safety coordinator(s) must have the authority to ensure compliance with all aspects of the COVID-19 plan.

(4)

(i) The employer must conduct a workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19.

(ii) In order for an employer to be exempt from any requirement providing controls in a well-defined area under paragraph (a)(4) of this section based on employees' or other persons being fully vaccinated ~~status~~, the COVID-19 plan must include policies and procedures to determine ~~employees'~~ vaccination status. The employer may not assume that individuals are not vaccinated by a written notice and assume that a person orally is vaccinated.

(5) The employer must seek the input and involvement of non-managerial employees and their representatives, if any, in the hazard assessment and the development and implementation of the COVID-19 plan.

(6) The employer must monitor each workplace to ensure the ongoing effectiveness of the COVID-19 plan and update it as needed.

(7) The COVID-19 plan must address the hazards identified by the assessment required by paragraph (c)(4) of this section, and include policies and procedures to:

(i) Minimize the risk of transmission of COVID-19 for each employee, as required by ~~paragraphs (d) through (n) of this section; this section or section 1910.503.~~

~~Note to paragraph (c)(7)(i):~~ Although the employer's COVID-19 plan must account for the potential COVID-19 exposures to each employee, the plan can do so generally and need not address each employee individually.

(ii) Effectively communicate and coordinate with other employers:

(A) When employees of different employers share the same physical location, each employer must effectively communicate its COVID-19 plan to all other employers, coordinate to ensure that each of its employees is protected as required by this section, and adjust its COVID-19 plan to address any particular COVID-19 hazards presented by the other employees. This requirement does not apply to delivery people, messengers, and other employees who only enter a workplace briefly to drop off or pick up items.

(B) An employer with one or more employees working in a physical location controlled by another employer must notify the controlling employer when those employees are exposed to conditions at that location that do not meet the requirements of this section; and

(iii) Protect employees who in the course of their employment enter into private residences or other physical locations controlled by a person not covered by the employer, particularly if not covered by the OSH Act (e.g., homeowners, sole proprietors). This must include procedures for employee withdrawal from that location if those protections are inadequate unless the employees are fully vaccinated and wearing respiratory protection. The withdrawal provisions may exempt first responders in appropriate emergencies.

Note to paragraph (c): The employer may include other policies, procedures, or information necessary to comply with any applicable federal, state, or local public health laws, standards, and guidelines in their COVID-19 plan.

(d) ~~Patient Individual~~ screening and management. In ~~congregate living facilities settings where direct patient care is provided~~, the employer must:

(1) ~~Limit and monitor~~ Monitor all points of entry to the setting. ~~This provision does not apply where emergency responders or other licensed healthcare providers enter a non-healthcare setting to provide healthcare services.~~

(2) Screen and triage all clients, patients, employees residents, delivery people and other visitors, and other ~~non-employees~~ non-residents entering the setting.

(3) ~~Implement other applicable patient management strategies in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations" (incorporated by reference, § 1910.509).~~

~~Note to paragraph (d): The employer is encouraged to use telehealth services where available and appropriate in order to limit the number of people entering the workplace.~~

~~This paragraph does not apply where masks and physical distancing become generally inapplicable pursuant to paragraph (i) of § 1910.503.~~

~~(e) Standard and Transmission-Based Precautions. Employers must develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC's "Guidelines for Isolation Precautions" (incorporated by reference, § 1910.509).~~

~~(e) Widespread community spread. In the event of widespread community spread is explicitly declared to be occurring by the CDC or other public health or governmental agencies, the employer must:~~

~~(1) Maximize the use of telework;~~

~~(2) Minimize the number of people at the same physical location sharing the same indoor air who are not wearing respiratory protection to the extent feasible; and~~

~~(3) Screen all persons who enter the workplace.~~

(f) Personal protective equipment (PPE).

(1) Facemasks and face coverings.

~~(i) Employers must provide, and ensure that employees wear, facemasks that meet the definition in paragraph (b) of this section; and~~

~~(ii) The employer must ensure a facemask is worn by each employee over the nose and mouth when indoors and when occupying a vehicle with other people for work purposes. The employer must provide a sufficient number of facemasks to each employee to comply with this paragraph and must ensure that each employee changes them at least once per day, whenever they are soiled or damaged, and more frequently as necessary (e.g., patient care reasons).~~

~~(iii) The following are exceptions to the requirements for facemasks in paragraph (f)(1)(ii) of this section:~~

~~(A) When an employee is alone in a room.~~

~~(B) While an employee is eating and drinking at the workplace, provided each employee is at least 6 feet away from any other person, or separated from other people by a physical barrier.~~

~~(C) When employees are wearing respiratory protection in accordance with § 1910.134 or paragraph (f) of this section.~~

~~(D) When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic (or includes a clear plastic window). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it.~~

~~(E) When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act (42 USC 12101 et seq.), or due to a religious belief. Exceptions must be provided for a narrow subset of persons with a disability who cannot wear a facemask or cannot safely wear a facemask, because of the disability, as defined in the Americans with Disabilities Act (42 USC 12101 et seq.), including a person who cannot independently remove the facemask. The remaining portion of the subset who cannot wear a facemask may be exempted on a case-by-case basis as required by the Americans with Disabilities Act and other applicable laws. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also need to be made for religious beliefs consistent with Title VII of the Civil Rights Act.~~

~~(F) When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., are flash, heat stress, interfering with the safe operation of equipment). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least 6 feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard.~~
~~Note to paragraph (f)(1)(iii)(F): With respect to paragraphs (f)(1)(iii)(D) through (F) of this section, the employer may determine that the use of face shields, without facemasks, in certain settings is not appropriate due to other infection control concerns:~~

~~(iv) Where a face shield is required to comply with this paragraph or is otherwise required by the employer, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield that meets the definition in paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield.~~

Employers must ensure that employees and all others present at a workplace wear face coverings as required by paragraph (c) of section 1910.503. When face coverings are required, an employer must permit an employee to wear a facemask. Employers must provide employees with a required face covering. If a facemask is required for employees, such facemasks must be available at the entrance to the indoor space

where the workplace is located for all persons entering the space at each open entrance to put on outside before entering, at no cost to the person entering.

(2) Respirators and ~~other PPE~~ vaccination status for exposure to people with suspected or confirmed COVID-19. When employees have exposure to a person with suspected or confirmed COVID-19, the employer must provide:

- (i) respiratory protection in the form a respirator to each employee and ensure that it is provided and used in accordance with § 1910.134 or §1910.504a and
- (ii) ~~gloves, an isolation gown or protective clothing, and eye protection to each employee and ensure that the PPE is used in accordance with subpart I of this part.~~ ensure each such employee is fully vaccinated.

Note 1 to paragraph (f)(2): When there is a limited supply of filtering facepiece respirators, employers may follow the CDC's "Strategies for Optimizing the Supply of N95 Respirators" (available at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy/index.html>). Where possible, employers are encouraged to select elastomeric respirators or PAPRs instead of filtering facepiece respirators to prevent shortages and supply chain disruption.

Note 2 to paragraph (f)(2): A facemask is not an acceptable alternative to respiratory protection except when complying with the alternative respiratory program. For a hospital, congregate living facility, or emergency medical services provider who is unable to ensure adequate PPE, immediate efforts must be made to search for PPE and governmental assistance must be requested forthwith.

Note 3 to paragraph (f)(2): Employees are encouraged to continuously wear respiratory protection instead of changing respirators between patients and other encounters. Such practice constituted conventional use of PPE.

Note 4 to paragraph (f)(2): Healthcare employers are encouraged to select elastomeric respirators or PAPRs instead of filtering facepiece respirators for COVID-19 patients. However, healthcare and congregate care settings allowing visitors to individuals with suspected or confirmed COVID-19 are strongly encouraged to have such visitors use loose fitting PAPRs that do not require fit testing when staff has fit tested filtering facepiece respirators available.

~~(3) Respirators and other PPE during aerosol-generating procedures. For aerosol-generating procedures performed on a person with suspected or confirmed COVID-19, the employer must provide:~~

- ~~(i) a respirator to each employee and ensure that it is provided and used in accordance with § 1910.134; and~~
- ~~(ii) gloves, an isolation gown or protective clothing, and eye protection to each employee and ensure that the PPE is used in accordance with subpart I of this part.~~

~~Note 1 to paragraph (f)(3): For aerosol-generating procedures on a person suspected or confirmed with COVID-19, employers are encouraged to select elastomeric respirators or PAPRs instead of filtering facepiece respirators.~~

~~Note 2 to paragraph (f)(3): Additional requirements specific to aerosol-generating procedures on people with suspected or confirmed COVID-19 are contained in paragraph (g) of this section.~~

(3) Requirements during COVID-19 testing. When conducting COVID-19 testing, the employer must comply with paragraphs (f)(2) and (g) of this section if not outdoors. When exposure is brief during outdoor COVID testing, employers are not required to comply with paragraph (f)(2) and may permit any employee to have brief contact if

- (i) wearing respiratory protection, regardless of vaccination status; or
- (ii) if fully vaccinated, wearing a facemask with a faceshield or a respirator in accordance with the mini respiratory protection program.

(4) Use of respirators when not required.

(i) The employer may provide a respirator to the employee instead of a facemask or face covering as required by paragraph (f)(4) of this section. In such circumstances, the employer must comply with § 1910.504.

(ii) Where the employer provides the employee with a facemask or face covering as required by paragraph (f)(1) of this section, the employer must permit the employee to wear their own respirator instead of a facemask unless the employee provides a respirator instead of a facemask or face covering pursuant to paragraph (f)(4)(I) of this section. In such circumstances, the employer must also comply with § 1910.504.

(5) Respirators and other PPE based on Standard and Transmission-Based Precautions.

~~The employer must provide protective clothing and equipment (e.g., respirators, gloves, gowns, goggles, face shields) to each employee in accordance with Standard and Transmission-Based Precautions in healthcare settings in accordance with CDC's "Guidelines for Isolation Precautions" (incorporated by reference, § 1910.509) and ensure that the protective clothing and equipment is used in accordance with subpart I of this part. This does not relieve employers from complying with other standards for standard and transmission based precautions.~~

(6) If in an emergency, a hospital, congregate living facility, or emergency services are unable to ensure that it can comply with the requirements of this section for only using fully vaccinated workers, in addition to testing pursuant to paragraph (I)(4)(iii)(A)(2) of this section, the employer must take additional steps to vaccinate employees or get temporary fully vaccinated workers to work. This does not require mandating COVID-19 vaccination, or discharging workers. Furthermore, such employer must report such cases as quickly as practicable, but in any event within 8 hours, to OSHA.

(g) ~~Aerosol-generating procedures on~~ Placement requirements for a person with suspected or confirmed COVID-19. When ~~an aerosol-generating procedure is performed on placing~~ a person with suspected or confirmed COVID-19 if not outdoors:

(1) The employer must ~~limit the number of employees present during the procedure to only those essential for patient care and procedure support.~~ place the person in a single person room, if feasible and ensure the door to the room is kept closed except for entry and exit. If not feasible, the employer must cohort a COVID-19 positive person with someone else who has COVID-19.

(2) The employer must ensure that the ~~person procedure~~ is performed placed in an existing AIIR, if available. If not available, a room with maximum ventilation and filtration and minimized recirculation of air must be used, to the extent feasible.

(3) After the ~~person leaves the room procedure is completed~~, the employer must ~~clean and disinfect the surfaces and equipment in the room or area where the procedure was performed~~ ensure the room stays unoccupied until four effective air changes for aerosols occur, or if such number is unknown, for two hours, except by employees and others meeting the requirements of paragraph (f)(2) of this section.

Note to paragraph (g): ~~Respirators and other PPE requirements during aerosol-generating procedures are contained in paragraph (f)(3) of this section. An employer is not required to keep someone outside under this paragraph.~~

(h) Physical distancing.

(1) The employer must ensure that each employee is separated from all other people by at least 6 feet when indoors unless the employer can demonstrate that such physical distancing is not feasible for a specific activity (e.g., hands-on medical care). This provision does not apply to momentary exposure while people are in movement (e.g., passing in hallways or aisles).

(2) When the employer establishes it is not feasible for an employee to maintain a distance of at least 6 feet from all other people, the employer must ensure that the employee is as far apart from all other people as feasible.

(3) This only applies to the extent provided in section 1910.503.

Note to paragraph (h): Physical distancing can include methods such as: telehealth; telework or other remote work arrangements; reducing the number of people, including non-employees, in an area at one time; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures to allow greater distance between employees.

(i) Physical barriers. ~~At each fixed work location outside of direct patient care areas (e.g., entryway/lobby, check-in desks, triage, hospital pharmacy windows, bill payment) where each employee is not separated from all other people by at least 6 feet of distance, the employer must install cleanable or disposable solid barriers, except where the employer can demonstrate it is not feasible. The barrier must be sized (e.g., height and width) and located to block face-to-face pathways between individuals based on where each person would normally stand or sit. The barrier may have a pass-through space at the bottom for objects and merchandise. Note to paragraph (i): Physical barriers are not required in direct patient care areas or resident rooms.~~

Physical barriers designed to block face to face pathways between individuals based on where they would normally stand or sit must be removed unless

(1) they were installed for reasons unrelated to COVID-19 or preventing other airborne transmitted diseases, such as sneeze guards to protect food;

(2) the areas being partitioned are separate rooms with full length doors and other barriers to prevent air from penetrating, but may have a pass through space for objects and merchandise that are kept closed except when being used;

(3) appropriate engineering analysis shows the barrier does not hinder the ventilation of the space or cause the buildup of aerosols in that space;

(4) removal is infeasible; or

(5) physical distancing is not required pursuant to paragraph (h).

(j) Cleaning and disinfection.

~~(1) In patient care areas, resident rooms, and for medical devices and equipment, the employer must follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations" and CDC's "Guidelines for Environmental Infection Control," pp. 86–103, 147–149 (both incorporated by reference, § 1910.509).~~

~~(2) In all other areas, the employer must:~~

~~(i) clean high-touch surfaces and equipment at least once a day, following~~

~~manufacturers' instructions for application of cleaners; and~~

~~(ii) When the employer is aware that a person who is COVID-19 positive has been in the workplace within the last 24 hours, clean and disinfect, in accordance with CDC's "Cleaning and Disinfecting Guidance" (incorporated by reference, § 1910.509), any areas, materials, and equipment under the employer's control that have likely been contaminated by the person who is COVID-19 positive (e.g., rooms they occupied, items they touched).~~

~~(3)~~

The employer must provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible hand washing facilities. This paragraph does not apply where masks and physical distancing become generally inapplicable pursuant to paragraph (i) of § 1910.503.

(k) Ventilation.

(1) Employers who own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s) must ensure that:

(i) The HVAC system(s) is used in accordance with the HVAC manufacturer's instructions and the design specifications of the HVAC system(s);

(ii) The amount of outside air circulated through its HVAC system(s) and the number of air changes per hour are maximized to the extent appropriate;

(iii) All air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC system(s). If MERV-13 or higher filters are not compatible with the HVAC system(s), employers must use filters with the highest compatible filtering efficiency for the HVAC system(s);

(iv) All air filters are maintained and replaced as necessary to ensure the proper function and performance of the HVAC system(s); and

(v) All intake ports that provide outside air to the HVAC system(s) are cleaned, maintained, and cleared of any debris that may affect the function and performance of the HVAC system(s).

(2) Where the employer has an existing AIIR, the employer must maintain and operate it in accordance with its design and construction criteria.

(3) This paragraph does not apply where masks and physical distancing become generally inapplicable pursuant to paragraph (i) of § 1910.503.

Note 1 to paragraph (k): This section does not require installation of new HVAC systems or AIIRs to replace or augment functioning systems.

Note 2 to paragraph (k): In addition to the requirements for existing HVAC systems and AIIRs, all employers should also consider other measures to improve ventilation in accordance with "CDC's Ventilation Guidance," (available at

www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html) (e.g., opening windows and doors). This could include maximizing ventilation in buildings without HVAC systems or in vehicles.

(I) Health screening and medical management.

(1) Screening.

(i)

The employer must screen each employee before each work day and each shift. Screening may be conducted by asking employees to self-monitor before reporting to work or may be conducted in-person by the employer.

~~(ii) If a COVID-19 test is required by the employer for screening purposes, the employer must provide the test to each employee at no cost to the employee.~~

(2) Employee notification to employer of COVID-19 illness or symptoms. The employer must require each employee to promptly notify the employer when the employee:

(i) is COVID-19 positive (i.e., confirmed positive test for, or has been diagnosed by a licensed healthcare provider with, COVID-19); or

(ii) has been told by a licensed healthcare provider that they are suspected to have COVID-19; or

(iii) is experiencing recent loss of taste and/or smell with no other explanation; or
(iv) is experiencing both fever ($\geq 100.4^{\circ}\text{F}$) and new unexplained cough associated with shortness of breath; or

(v) has been notified by a contact tracer or from a governmental entity that they have been ordered, directed, or requested to isolate or quarantine due to COVID-19.

(3) Employer notification to employees of COVID-19 exposure in the workplace.

(i) Except as provided for in paragraph (I)(3)(iii) of this section, when the employer is notified that a person who has been in the workplace(s) (including employees, clients, patients, residents, vendors, contractors, customers, delivery people and other visitors, or other non-employees) is COVID-19 positive, the employer must, within 24 hours:

(A) Notify each employee who ~~was not wearing a respirator and any other required PPE and~~ has been in close contact with that person in the workplace. The notification must state the fact that the employee was in close contact with someone with COVID-19 along with the date(s) that contact occurred.

(B) Notify all other employees who were not ~~wearing a~~ close contact respirator and any other required PPE and worked in a well-defined portion of a workplace (e.g., a particular floor) in which that person was present during the potential transmission period. ~~The potential transmission period runs from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated.~~ The notification must specify the date(s) and approximate times, if applicable the person with COVID-19 was in the workplace during the potential transmission period. A person who is fully

vaccinated and was wearing respiratory protection may, but is not required, to be notified.

(C) Notify other employers whose employees may require notification under this paragraph. ~~were not wearing respirators and any other required PPE and have been in close contact with that person, or worked in a well-defined portion of a workplace (e.g., a particular floor) in which that person was present, during the potential transmission period. The potential transmission period runs from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated. The notification must specify the date(s) the person with COVID-19 was in the workplace during the potential transmission period and the location(s) where the person with COVID-19 was in the workplace.~~

(D) Notify the public health authority which conducts contact tracing, as directed by that state.

(ii) The notifications required by paragraph (l)(3)(i) of this section must not include any employee's name, contact information (e.g., phone number, email address), or occupation except to a public health authority by paragraph (l)(3)(i)(D) of this section or as required by paragraph (l)(3)(iv) of this section.

(iii) The notification provisions are not triggered by the presence of a patient person with confirmed COVID-19 in a workplace where services are normally provided to suspected or confirmed COVID-19 patients (e.g., emergency rooms, urgent care facilities, COVID-19 testing sites, COVID-19 wards in hospitals) or if all employees in the place were wearing respiratory protection and are fully vaccinated.

(iv) An employer must fully cooperate in contact tracing, including with other employers or employees. An employer cannot invoke the provisions of this section, any state law or federal laws, including the Federal Educational Records Privacy Act, the Health Information Portability and Accountability Act, or the Americans with Disabilities Act to avoid disclosing information required to contact trace cases of COVID-19.

(4) Medical removal from the workplace.

(i) If the employer knows an employee meets the criteria listed in paragraph (l)(2)(i) of this section, then the employer must immediately remove that employee and keep the employee removed until they meet the return to work criteria in paragraph (l)(6) of this section.

(ii) If the employer knows an employee meets the criteria listed in paragraphs (l)(2)(ii) through (l)(2)(iv) of this section, then the employer must immediately remove that employee and either:

(A) Keep the employee removed until they meet the return to work criteria in paragraph (l)(6) of this section; or

(B) Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.

(1) If the test results are negative, the employee may return to work immediately.

(2) If the test results are positive, the employer must comply with paragraph (I)(4)(i) of this section.

(3) If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace consistent with paragraph (I)(4)(ii)(A) of this section, but the employer is not obligated to provide medical removal protection benefits in accordance with paragraph (I)(5)(iii) of this section.

~~Absent undue hardship, employers must make reasonable accommodations for employees who cannot take the test for religious or disability related medical reasons.~~

Note to paragraph (I)(4)(ii): This partial symptom list in paragraphs (I)(2)(iii) and (I)(2)(iv) of this section informs the employer of the minimum requirements for compliance. The full list of COVID-19 symptoms provided by CDC includes additional symptoms not listed in paragraphs (I)(2)(iii) through (I)(2)(iv) of this section. Employers may choose to remove or test employees with additional symptoms from the CDC list, or refer the employees to a healthcare provider.

(iii)

(A) If the employer is required to notify the employee of close contact in the workplace to a person who is COVID-19 positive in accordance with paragraph (I)(3)(i)(A) of this section, then the employer must immediately remove that employee and either:

(1) Keep the employee removed for 14 days from the date of the exposure; or

(2) If the exposure was outdoors, the employee was wearing respiratory protection, the employee was fully vaccinated, or the employee had COVID-19 within the past three months, the employee may immediately return the worker to the workplace but must be removed after day 4 following exposure. The employee may return after either providing a negative test or when 14 days elapse from the exposure, whichever comes first; or

(3) If the employee was participating in the mini respiratory protection program, the employer may allow the worker to return during the first 14 days from the date of exposure provided that they have a negative test administered within the past twelve hours;

(4) Keep the employee removed for 14 days from the date of exposure, provided that the employer and provide a COVID-19 may permit an employee to return to work beginning on day eight after exposure provided that they have a negative test administered within the past twelve hours; test at least five days after the exposure at no cost to the employee.

~~(i) If the test results are negative, the employee may return to work after seven days following exposure.~~

~~(ii) If the test results are positive, the employer must comply with paragraph (l)(4)(i) of this section.~~

Note 1 to paragraph (l)(4)(iii)(A): If an employee is fully vaccinated and was wearing respiratory protection during the contact, as that time must be fully disregarded in determining whether the employee was a close contact. Consequently, such an employee would not be covered under this provision.

Note 2 to paragraph (l)(4)(iii)(A): If an employee has tests positive, the provisions of paragraph (l)(4)(i) are triggered.

~~(3) (B)~~ If the employee refuses to take ~~the~~ a test, the employer must continue to keep the employee removed from the workplace consistent with paragraph (l)(4)(iii)(A)(1) of this section, but the employer is not obligated to provide medical removal protection benefits in accordance with paragraph (l)(5)(iii) of this section. Absent undue hardship, employers must make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons, consistent with applicable non-discrimination laws.

~~(B) Employers are not required to remove any employee who would otherwise be required to be removed under paragraph (i)(4)(iii)(A) of this section if the employee does not experience the symptoms in paragraph (l)(2)(iii) or (l)(2)(iv) of this section and has:~~

~~(1) been fully vaccinated against COVID-19 (i.e., 2 weeks or more following the final dose); or~~

~~(2) had COVID-19 and recovered within the past 3 months.~~

(iv) Any time an employee is required to be removed from the workplace for any reason under paragraph (l)(4) of this section, the employer may require the employee to telework from where the employee is quarantining or isolating work remotely or in isolation if suitable work is available.

Note to paragraph (l)(4)(iv) of this section: The term suitable work may not be the same work that the employee does at the job site.

(v) If an employee is required to notify the employer pursuant to paragraph (i)(2)(v) of this section or an employer finds out from a contact tracer or public health entity the entity has attempted to make such contact or is about to, the employer must remove the employee from the workplace immediately and keep the employee removed until such quarantine or isolation period ends.

(5) Medical removal protection benefits.

(i) Employers with 10 or fewer employees on the effective date of this section are not ~~exempt from complying~~ ~~required to comply~~ with paragraphs (l)(5)(iii) through (l)(5)(iv) of this section.

(ii) When an employer allows an employee to work remotely or in isolation in accordance with paragraph (l)(4)(iv) of this section, the employer must continue to pay the employee the same regular pay and benefits the employee would have

received had the employee not been absent from work, until the employee meets the return to work criteria specified in paragraph (l)(4)(iii) or (l)(6) of this section.

(iii) When an employer removes an employee in accordance with paragraph (l)(4) of this section:

(A) the employer must continue to provide the benefits to which the employee is normally entitled and must also pay the employee the same regular pay the employee would have received had the employee not been absent from work, up to \$1,400 per week, until the employee meets the return to work criteria specified in paragraph (l)(4)(iii) or (l)(6) of this section.

(B) For employers with fewer than 500 employees, the employer must pay the employee up to the \$1,400 per week cap but, beginning in the third week of an employee's removal, the amount is reduced to only two-thirds of the same regular pay the employee would have received or the minimum wage, whichever is greater, had the employee not been absent from work, up to \$200 per day (\$1,000 per week in most cases).

(iv) The employer's payment obligation under paragraph (l)(5)(iii) of this section is reduced by the amount of compensation that the employee receives from any other source, such as a publicly or employer-funded compensation program (e.g., paid sick leave, administrative leave), for earnings lost during the period of removal or any additional source of income the employee receives that is made possible by virtue of the employee's removal.

(v) Whenever an employee returns to the workplace after a COVID-19-related workplace removal, that employee must be reinstated as if they were relieved pursuant to the Family and Medical Leave, regardless as to whether or not the employer is covered by that act. not suffer any adverse action as a result of that removal from the workplace and must maintain all employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed.

(vi) Notwithstanding any other provision in this paragraph, any employee who fails to comply with a quarantine or isolation directive which the employee would be entitled to paid leave under paragraph (i)(2)(v) of this section is not entitled to protections under paragraphs (i)(5) of this section.

(6) Return to work. The employer must make decisions regarding an employee's return to work after a COVID-19-related workplace removal in accordance with guidance from a licensed healthcare provider or CDC's "Isolation Guidance" ~~(incorporated by reference, § 1910.509)~~; and CDC's "Return to Work Healthcare Guidance" ~~(incorporated by reference, § 1910.509)~~.

~~Note to paragraph (l): OSHA recognizes that CDC's "Strategies to Mitigate Healthcare Personnel Staffing Shortages" (available at www.cdc.gov/coronavirus/2019-nCoV/hcp/mitigating-staff-shortages.html) allows elimination of quarantine for certain healthcare workers, but only as a last resort, if the workers' absence would mean there are no longer enough staff to provide safe patient care, specific other amelioration strategies have already been tried, patients have been notified, and workers are utilizing additional PPE at all times.~~

(m) Vaccination.

(1) The employer must support COVID-19 vaccination for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination. ~~An employee is required to arrange for employees who do not have effective access to a vaccine site and desire to get vaccinated to get vaccinated at the workplace.~~

(2) An employer is required to ensure any unvaccinated employee understands and signs the following statement, and key on file such statement for the duration of the employees employment or until vaccinated against COVID-19: "I understand that due to my occupational exposure to others I may be at risk of acquiring COVID-19 infection. I have been given the opportunity to be vaccinated with COVID-19 vaccine, at no charge to myself. However, I decline COVID-19 vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring COVID-19, a serious disease. If in the future I continue to have occupational exposure to COVID-19 and I want to be vaccinated with COVID-19 vaccine, I can receive the vaccination series at no charge to me."

(3) An employer may mandate vaccinations for employees as a condition of employment and others who enter workplaces notwithstanding any state law to the contrary, subject to the requirements of Title VII of the Civil Rights Act and the Americans with Disabilities Act.

(n) Training.

(1) The employer must ensure that each employee receives training, in a language and at a literacy level the employee understands, and so that the employee comprehends at least the following insofar as may be applicable to the duties of each employee:

- (i) COVID-19, including how the disease is transmitted (including pre-symptomatic and asymptomatic transmission), the importance of hand hygiene ~~to reduce the risk of spreading COVID-19 infections~~, ways to reduce the risk of spreading COVID-19 through the proper covering of the nose and mouth, the signs and symptoms of the disease, risk factors for severe illness, and when to seek medical attention;
- (ii) employer-specific policies and procedures on ~~patient~~ screening and management;
- (iii) tasks and situations in the workplace that could result in COVID-19 infection;
- (iv) workplace-specific policies and procedures to prevent the spread of COVID-19 that are applicable to the employee's duties ~~(e.g., policies on Standard and Transmission-Based Precautions, physical distancing, physical barriers, ventilation, aerosol-generating procedures);~~
- (v) employer-specific multi-employer workplace agreements related to infection control policies and procedures, the use of common areas, and the use of shared equipment that affect employees at the workplace;
- (vi) employer-specific policies and procedures for PPE worn to comply with this section, including:
 - (A) when PPE is required for protection against COVID-19;
 - (B) limitations of PPE for protection against COVID-19;

- (C) how to properly put on, wear, and take off PPE;
- (D) how to properly care for, store, clean, maintain, and dispose of PPE;
- and
- (E) any modifications to donning, doffing, cleaning, storage, maintenance, and disposal procedures needed to address COVID-19 when PPE is worn to address workplace hazards other than COVID-19;
- (vii) workplace-specific policies and procedures for cleaning and disinfection;
- (viii) employer-specific policies and procedures on health screening and medical management;
- (ix) available sick leave policies, any COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, access rights to get vaccinated if the employee except that the employer is not required to provide such training if the employer knows the employee is vaccinated, and other supportive policies and practices (e.g., telework, flexible hours);
- (x) the identity of the safety coordinator(s) specified in the COVID-19 plan,
- (xi) this section prohibitions against retaliation; and
- (xii) how the employee can obtain copies of this section and any employer-specific policies and procedures developed under this section, including the employer's written COVID-19 plan, if required.

Note 1 to paragraph (n)(1): Employers may rely on training completed prior to the effective date of this section to the extent that it meets the relevant training requirements under this paragraph.

Note 2 to paragraph (n)(1): All employees conduct training on paragraphs (n)(1)(i). and (n)(1)(ix) applies to all employees.

(2) The employer must ensure that each employee receives additional training whenever:

- (i) changes occur that affect the employee's risk of contracting COVID-19 at work (e.g., new job tasks);
- (ii) policies or procedures are changed; or
- (iii) there is an indication that the employee has not retained the necessary understanding or skill.

(3) The employer must ensure that the training is overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the employee's job duties.

(4) The employer must ensure that the training provides an opportunity for interactive questions and answers with a person knowledgeable in the covered subject matter as it relates to the employee's job duties.

(5) The requirement to conduct training terminates when the employer is no longer to maintain a plan under paragraph (q)(2)(i) of this section. This determination must be made ignoring the small business exception under paragraph (q)(1) of this section.

(o) Anti-Retaliation.

(1) The employer must inform each employee that:

- (i) employees have a right to the protections required by this section;

(ii) employers are prohibited from discharging or in any manner discriminating against any employee for exercising their right to the protections required by this section, or for engaging in actions that are required by this section.

(2) The employer must not discharge or in any manner discriminate against any employee for exercising their right to the protections required by this section, or for engaging in actions that are required by this section.

Note to paragraph (o): In addition, section 11(c) of the OSH Act also prohibits the employer from discriminating against an employee for exercising rights under, or as a result of actions that are required by, this section. That provision of the Act also protects the employee who files a safety and health complaint, or otherwise exercises any rights afforded by the OSH Act.

(p) Requirements implemented at no cost to employees. The implementation of all requirements of this section, with the exception of any employee self-monitoring conducted under paragraph (l)(1)(i) of this section, must be at no cost to employees.

(q) Recordkeeping.

(1) Small employer exclusion. Employers with 10 or fewer employees on the effective date of this section are not required to comply with paragraph (q)(2)(A) or (q)(3) of this section.

(2) Required records. Employers with more than 10 employees on the effective date of this section must:

(i) retain all versions of the COVID-19 plan implemented to comply with this section and prior COVID-19 plans maintained before this requirement became applicable while this section remains in effect until the later of

(A) December 31 2021;

(B) Three months after when masks and physical distancing become generally inapplicable pursuant to paragraph (i) of § 1910.503;

(C) Six months after the effective date of this section; or

(D) For healthcare workplaces, three years from when the prior plan was in effect for.

(ii) establish and maintain a COVID-19 log to record each instance identified by the employer in which an employee is COVID-19 positive or case where a person presumed to be COVID-19 positive enters the workplace, regardless of whether the instance is connected to exposure to COVID-19 at work.

(A) The COVID-19 log must contain, for each instance, the employee's name, one form of contact information, occupation, location where the employee worked, the date of the employee's last day at the workplace, the date of the positive test for, or diagnosis of, COVID-19, whom the employee was in close contact with and the date the employee first had one or more COVID-19 symptoms, if any were experienced.

(B) The information in the COVID-19 log must be recorded within 24 hours of the employer learning that the employee is COVID-19 positive and must be maintained as though it is a confidential medical record and must not be disclosed except as required by this ETS or other federal law.

(C) The COVID-19 log must be maintained and preserved while this section remains in effect: for six months or the date established by section

(D) For non employees, the employer must record the information to the extent known by the employer.

Note to paragraph (q)(2)(ii): The COVID-19 log is intended to assist employers with tracking and evaluating instances of employees who are COVID-19 positive without regard to whether those employees were infected at work. The tracking will help evaluate potential workplace exposure to other employees.

(3) Availability of records. An employer must provide the entire COVID-19 log to a state, local, or tribal public health department or entity designated by it for purposes of contact tracing as expeditiously as possible. By the end of the next business day after a request, the employer must provide, for examination and copying:

- (i) All versions of the written COVID-19 plan to all of the following: any employees, their personal representatives, and their authorized representatives.
- (ii) The individual COVID-19 log entry for a particular employee to that employee and to anyone having written authorized consent of that employee.
- (iii) A version of the COVID-19 log that removes the names of employees, contact information, and occupation, and only includes, for each employee in the COVID-19 log, the location where the employee worked, the last day that the employee was at the workplace before removal, the date of that employee's positive test for, or diagnosis of, COVID-19, and the date the employee first had one or more COVID-19 symptoms, if any were experienced, to all of the following: any employees, their personal representatives, and their authorized representatives.
- (iv) All records required to be maintained by this section to the Assistant Secretary.

Note to paragraph (q): Employers must continue to record all work-related confirmed cases of COVID-19 on their OSHA Forms 300, 300A, and 301, or the equivalent forms, if required to do so under 29 CFR part 1904.

(r) Reporting COVID-19 fatalities and hospitalizations to OSHA.

(1) The employer must report to OSHA:

- (i) Each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality.
- (ii) Each work-related COVID-19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization.

(2) When reporting COVID-19 fatalities and in-patient hospitalizations to OSHA in accordance with paragraph (r)(1) of this section, the employer must follow the requirements in 29 CFR part 1904.39, except for 29 CFR part 1904.39(a)(1) and (2) and (b)(6).

(3) Inability to comply with paragraph (f)(2) of this section must be reported as expeditiously as possible.

(s) Dates.

(1) Effective date. This section is effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(2) Compliance dates.

(i) Employers must comply with all requirements of this section, except for requirements in paragraph (i), paragraph (k), and paragraph (n) of this section by [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(ii) Employers must comply with the requirements of this section in paragraph (i), paragraph (k), and paragraph (n) of this section by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§1910.503 Temporary Requirements.

(a) Scope and application. This section applies within any physical location controlled by the employer where employees might be present. In addition, an employee is required to follow these requirements while working, other than at home or through telework, even outside of a formal workplace or physical location.

(b) Definitions. The definitions in paragraph (b) of §1910.502 also apply to this section.

(c) General Requirements. Except as otherwise provided by this section, an employer must use best efforts to ensure each person present at the workplace is

(1) wear a face covering properly; and

(2) maintain physical distancing pursuant to paragraph (h) of .502.

Note to paragraph (c): This section does not preempt any other mask or physical distancing requirement.

(d) Cruise ship.

(1) Except as provided in paragraph (d)(2) of this section, any employer who has any employee covered by the OSH Act (other than through telework), and any employee who interacts with passengers at a port in embarking or disembarking a cruise ship shall ensure each employee who is onboard the ship meets the requirements of §1910.502(f)(2) when such employee is onboard a cruise ship and any customer is onboard such ship or has been within the preceding two hours, or while passengers are embarking or disembarking such vessel.

(2) Paragraph (d)(1) does not apply when such cruise ship company ensures each passenger and employee is fully vaccinated, has a medical exemption to vaccination, the employer determines a vaccination would be contrary to the person's sincerely held religious beliefs, or is ineligible to get vaccinated. A person under the age of 16 who received the first vaccination dose within 14 days of the FDA granting emergency use for said age group and gets any subsequent dose within the standard time period, or is ineligible due to age to get vaccinated, provided that the child, if two years of age or older, takes a negative test within the 12 hours before embarking on the voyage, shall be deemed to have a medical exemption to vaccination under this paragraph.

(e) Best efforts.

(1) Non-Employees. Except as provided in paragraph (e)(3) of this section, best efforts include

(i) Allowing entry only to individuals who are wearing face coverings

(ii) Limiting the number of persons who may enter a space;

(iii) Instructing people that Federal Regulations requires wearing of face coverings and physically distancing requirements;

- (iv) Monitoring for compliance with the face covering and physical distance requirements and seeking compliance;
- (v) Removal at the earliest opportunity of persons who refuse to comply;
- (vi) Providing persons with prominent and adequate notice, including posting signs; and
- (vii) Offer complementary face coverings to wear.

Note to paragraph (e)(1): Best efforts do not require subjecting employees to threats of workplace violence.

(2) Employees. Employers shall take appropriate steps to correct any failure to comply with these requirements, such as retraining or discipline.

(3) Law enforcement. Law enforcement are not required to fine, give a ticket, or arrest a person for failure to comply with requests to comply with this standard. This applies notwithstanding that law enforcement may be from the same employer.

(f) Exemptions

A person is not required to wear a mask or physically distance under the following circumstances:

(1) Same party or household.

(i) A person is not required to physically distance themselves from members of the same household.

(ii) A person is not required to physically distance themselves from members of the same party. The party must be no larger than six and must not include any employee.

(2) Location exemptions from requirements.

(i) Outdoors. When outdoors, an employer is not required to comply with the requirements of paragraph (c) of this section.

(ii) Fully Vaccinated. When all persons present are fully vaccinated, or are unable to get vaccinated due to a medical reason or a sincerely held religious belief, individuals present are not required to comply with the requirements of paragraph (c) of this section.

(iii) Full Protection. When an employer requires all employees in a specific area to be fully vaccinated and wear respiratory protection, the requirements to comply with paragraph (c) of this section shall not apply. In such case, before an employer can permit employees to reenter such space who do not meet the requirements of paragraph (f)(2) of §1910.502, the waiting period in section (g) of paragraph (g) of § 1910.502 must be observed as if a positive case was present.

(iv) Unsafe. When it would be unsafe pursuant to the workplace or other safety requirements to wear a face covering, an employer is exempt from requiring the wearing of a face covering. Such requirements must be unrelated to COVID-19 and prohibit the wearing of a face covering. In such circumstances regularly occur at work, and an exception under this paragraph does not apply to such settings, an employer must require employees not yet fully vaccinated to get tested within the previous three days. Non employees must have a negative test within the previous twelve hours.

Note to paragraph (f)(2)(iv): An employer who requires using a respirator or facemask instead of a face covering due to workplace safety requirements is not exempt under paragraph (f)(2)(iv) of this section. Such a policy complies with paragraph (c)(1) of this section.

(v) Transportation. A cruise ship is exempt from the requirements of paragraph (c) of this section. An airline may also claim an exemption on board an aircraft for a flight if it chooses for that flight to comply with paragraph (d) of this section as if a cruise ship.

(vi) Telework. When an employee teleworks, an employer is not required to comply with the requirements of paragraph (c) of this section. This does not provide an exception to unmask or not physically distance if at a location where otherwise required under this section.

(vii) Alone. An employee alone in a separate room, or alone transporting in a private vehicle, is not required by paragraph (c) of this section to wear a face covering.

(3) Personal exemption from mask requirements.

(i) Unsafe. When it would be unsafe pursuant to workplace safety requirements to wear a face covering, the requirement to wear a face covering is suspended. This applies to an individual who is unconscious other than when sleeping, incapacitated, needs to use supplemental oxygen that prevents wearing a face covering, or unable to remove a mask without assistance. This also applies in the case of a disability.

(ii) Youth. A child under the age of two is not required to wear a face covering. A young child who refuses to wear a face covering even after parents or other guardian attempts to have the young child who has reached the age of two wear a mask is not required to wear a face covering.

(iii) Disability. A person who, because of a disability or medical reason, cannot safely wear a mask is not required to wear a mask.

(iv) Consumption. A person is not required to wear a mask while eating, drinking, or taking medications for brief periods. Such persons must not be talking, singing, yelling, or conducting similar activities while this exception applies.

(v) Hearing impairment. If a person is communicating with someone who is hearing impaired and seeing the mouth is essential for communication, the requirements of paragraph (c) shall not apply. Employees who regularly are exposed to such requirements must be tested within the previous three days.

(4) Verification.

(i) Testing. Any person who took a test within the previous twelve hours, and the results of the test are negative is exempt from the requirements of paragraph (c) of this section. This exemption expires twelve hours from when the test was administered, and not from when the results were known. Proof of a negative test is determined in the same manner as proof of vaccination.

(ii) Fully vaccinated. Any person with proof of being fully vaccinated is exempt from the requirements of paragraph (c) of this section.

(5) Residence.

(i) Confinement. A person who is confined in a jail, prison, or other similar setting is exempt from the requirements of paragraph (c) of this section, including when being transported under confinement. This includes when such a person is brought to court, such as for and during a criminal proceeding.

(ii) Congregate living facility. A person who lives at a congregate living facility is exempt from the requirements of paragraph (c) of this section.

(iii) Residence. A person is exempt inside their residence from the requirements of paragraph (c) of this section, except when an employee enters the residence. An employee is not required to take action to leave a residence if a person fails to comply if providing emergency services, such as police, fire, or emergency medical services. A residence shall include a temporary residence, such as a hotel room.

(iv) Patient. A patient in a hospital or other setting is exempt from the requirements of paragraph (c) of this section.

Note to paragraph (f): Exceptions provided by this paragraph do not exempt an employee from the requirements to comply with paragraphs (f)(2) and (f)(3) of §1910.502.

(g) Employee paid testing to unmask. If an employer allows an employee to unmask through a negative COVID-19 test pursuant to paragraph but declines to pay for such testing, the employer must have a policy that

(1) Allows fully vaccinated employees to unmask without requiring a test;

(2) Allows employees to wear a mask at all times except when exempt from such requirement due to other reasons;

(3) Imposes no consequences (other than requiring an employee to wear a mask pursuant to this requirement) for an employee who chooses not to pay for a test; and

(4) Does not apply the exemption of paragraph (f)(4)(i) of this section to any employee who was a close contact within the past 14 days.

(h) Dental procedures. An employer for dental work must provide each employee with respiratory protection unless the space where dental work is performed meets the requirements of paragraph (g) of §1910.502 or employer ensures each patient on whom dental work is performed is exempt under paragraph (f)(4) from the requirement to wear a face covering.

(i) Inactivation of Requirements.

(1) Gating criteria. For purposes of this rule, the requirements must be

(i) at least fourteen days after at least seventy percent of the entire population of a given area has received at least one dose of a COVID-19 vaccine; and

(ii) the percent positive rate on COVID-19 tests must be under 1% while up to 1 person per 100,000 per day test positive, both measured, on a rolling seven day average, for the given area.

(2) Required area.

(i) Except for transportation between two counties, Amtrak, air transportation, or cruise ships, the requirement must be met in the county of where the cases occur.

(ii) For transportation between two counties not by air nor on Amtrak, the requirement must be met in the county where the principal destination is. For commuter services, this is where the majority of people commute to.

(iii) For Amtrak, the requirement must be met in each state which the train passes through, treating the District of Columbia as a state, meets the requirement.

(iv) For cruise ships, airports, and airplanes, the requirement shall apply until each state, the District of Columbia, and each territory or possession of the United States meets this requirement.

(j) Effective date.

(1) Effective date. This section is effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(2) Compliance dates.

(i) Employers must comply with all requirements of this section, except for requirements in paragraph (i), paragraph (k), and paragraph (n) of this section by [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§ 1910.504 Mini Respiratory Protection Program.

(a) Scope and application. This section applies only to respirator use in accordance with § 1910.502 (f)(4).

(b) Definitions. ~~The following definitions apply to this section:~~

~~COVID-19 (Coronavirus Disease 2019) means the respiratory disease caused by SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2). For clarity and ease of reference, this section refers to “COVID-19” when describing exposures or potential exposures to SARS-CoV-2.~~

~~Elastomeric respirator means a tight-fitting respirator with a facepiece that is made of synthetic or rubber material that permits it to be disinfected, cleaned, and reused according to manufacturer’s instructions. It is equipped with a replaceable cartridge(s), canister(s), or filter(s).~~

~~Filtering facepiece respirator means a negative-pressure particulate respirator with a non-replaceable filter as an integral part of the facepiece or with the entire facepiece composed of the non-replaceable filtering medium.~~

~~Hand hygiene means the cleaning and/or disinfecting of one’s hands by using standard handwashing methods with soap and running water or an alcohol-based hand rub that is at least 60% alcohol.~~

~~Respirator means a type of personal protective equipment (PPE) that is certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR part 84 or is authorized under an Emergency Use Authorization (EUA) by the US Food and Drug Administration. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators, elastomeric respirators, and PAPRs. Face coverings, facemasks, and faceshields are not respirators.~~

~~Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.~~

~~Tight-fitting respirator means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator (e.g., filtering facepiece).~~

~~——— User seal check means an action conducted by the respirator user to determine if the respirator is properly seated to the face.~~

The definitions in paragraph (b) of §1910.502 also apply to this section.

(c) Respirators provided by employees. Where employees provide and use their own respirators, the employer must provide each employee with the following notice: Respirators can be an effective method of protection against COVID-19 hazards when properly selected and worn. Respirator use is encouraged to provide an additional level of comfort and protection for workers even in circumstances that do not require a respirator to be used. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. If your employer allows you to provide and use your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard. You should do the following:

- (1) Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator's limitations.
- (2) Keep track of your respirator so that you do not mistakenly use someone else's respirator.
- (3) Do not wear your respirator where other workplace hazards (e.g., chemical exposures) require use of a respirator. In such cases, your employer must provide you with a respirator that is used in accordance with OSHA's respiratory protection standard (29 CFR part 1910.134).

For more information about using a respirator, see OSHA's respiratory protection safety and health topics page (<https://www.osha.gov/respiratory-protection>).

(d) Respirators provided by employers. Where employers provide respirators to their employees, the employer must comply with the following requirements:

- (1) Training. The employer must ensure that each employee wearing respirator receives training prior to first use and if they change the type of respirator, in a language and at a literacy level the employee understands, and comprehends at least the following:
 - (i) How to inspect, put on and remove, and use a respirator;
 - (ii) The limitations and capabilities of the respirator, particularly when the respirator has not been fit tested except that when done trained pursuant to the alternative respiratory protection program is utilized pursuant to §1910.504a, training the limitation of using a respirator that is not fit tested is not required;
 - (iii) Procedures and schedules for storing, maintaining, and inspecting respirators;
 - (iv) How to perform a user seal check as described in paragraph (d)(2) of this section; and
 - (v) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators and what to do if the employee experiences signs and symptoms.
- (2) User seal check.
 - (i) The employer must ensure that each employee who uses a tight-fitting respirator performs a user seal check to ensure that the respirator is properly seated to the face each time the respirator is put on. Acceptable methods of user seal checks include:

(A) Positive pressure user seal check (i.e., blow air out). Once you have conducted proper hand hygiene and properly donned the respirator, place your hands over the facepiece, covering as much surface area as possible. Exhale gently into the facepiece. The face fit is considered satisfactory if a slight positive pressure is being built up inside the facepiece without any evidence of outward leakage of air at the seal. Examples of evidence that it is leaking could be the feeling of air movement on your face along the seal of the facepiece, fogging of your glasses, or a lack of pressure being built up inside the facepiece. If the particulate respirator has an exhalation valve, then performing a positive pressure check may not be possible unless the user can cover the exhalation valve. In such cases, a negative pressure check must be performed.

(B) Negative pressure user seal check (i.e., suck air in). Once you have conducted proper hand hygiene and properly donned the respirator, cover the filter surface with your hands as much as possible and then inhale. The facepiece should collapse on your face and you should not feel air passing between your face and the facepiece.

(ii) The employer must ensure that each employee corrects any problems discovered during the user seal check. In the case of either type of user seal check (positive or negative), if air leaks around the nose, use both hands to readjust how the respirator sits on your face or adjust the nosepiece, if applicable. Readjust the straps along the sides of your head until a proper seal is achieved.

Note to paragraph (d)(2)(i) and (ii): When employees are required to wear a respirator and a problem with the seal check arises due to interference with the seal by an employee's facial hair, employers may provide a different type of respirator to accommodate employees who cannot trim or cut facial hair due to religious belief.

(3) Reuse of respirators.

(i) The employer must ensure that a filtering facepiece respirator used by a particular employee is only reused by that employee, and only when:

- (A) the respirator is not visibly soiled or damaged;
- (B) the respirator has been stored in a breathable storage container (e.g., paper bag) for at least five calendar days between use and has been kept away from water or moisture;
- (C) the employee does a visual check in adequate lighting for damage to the respirator's fabric or seal;
- (D) the employee successfully completes a user seal check as described in paragraph (d)(2) of this section
- (E) the employee uses proper hand hygiene before putting the respirator on and conducting the user seal check; and
- (F) the respirator has not been worn more than five days total.

Note to paragraph (d)(3)(i): The reuse of single-use respirators (e.g., filtering facepiece respirators) is discouraged.

(ii) The employer must ensure that an elastomeric respirator or PAPR is only reused when:

(A) the respirator is not damaged;

(B) the respirator is cleaned and disinfected as often as necessary to be maintained in a sanitary condition in accordance with § 1910.134, Appendix B-2; and

(C) a change schedule is implemented for cartridges, canisters, or filters.

(4) Discontinuing use of respirators. Employers must require employees to discontinue use of a respirator when either the employee or a supervisor reports medical signs or symptoms (e.g., shortness of breath, coughing, wheezing, chest pain, any other symptoms related to lung problems, cardiovascular symptoms) that are related to ability to use a respirator. Any employee who previously had a medical evaluation and was determined to not be medically fit to wear a respirator must not be provided with a respirator under this standard unless they are re-evaluated and medically cleared to use a respirator.

(e) Effective date. This section is effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§ 1910.504a Alternate Respiratory Protection Program.

(a) Scope and application. This section applies only to respirator use in accordance with this program. This does not apply when employers are required to wear a respirator for reasons other than due to COVID-19.

(b) Provisions. The definitions used in §1910.502(b), and the provisions of §1910.504, to the extent not inconsistent with this section, shall govern.

(c) Appropriate respirator.

(1) A respirator used must not be an atmosphere supplying respirator or escape only respirator, as defined in 29 CFR §1910.134.

(2) A facemask with a surgical mask brace may be used as a respirator provided the brace is designed to be reusable and each facemask is disposed of once doffed. The model of facemask used must be fit tested to the specific surgical mask brace used.

(d) Fit test. The employer must comply with

(1) the fit testing requirements in §1910.134(f);

(2) the facepiece seal requirements in §1910.134(g)(1); and

(3) the record requirements in §1910.134(m)(2).

(e) Effective date. This section is effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§ 1910.505 Severability.

(a) Each section of this subpart U, and each provision within those sections, is separate and severable from the other sections and provisions **except as provided by paragraph (b)**. If any provision of this subpart is held to be invalid or unenforceable on its face, or as applied to any person, entity, or circumstance, or is stayed or enjoined, that provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding

shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this subpart and shall not affect the remainder of the subpart.

(b) If paragraph (i)(2) of §1910.503 is invalidated on the grounds that the date is required to be uniform throughout the United States or regardless of industry, the requirements of paragraph (i)(2)(iv) must be applied in such situation uniformly to all situations.

Conclusion

For the reasons stated in this submission, OSHA should amend the emergency temporary standard and proposed rule as proposed herein.

Sincerely,
Theo Allen